Amanda M. Fugazy (AF-6772)
Paul P. Rooney (PR-0333)
FUGAZY & ROONEY LLP
225 Broadway, 39th Floor
New York, NY 10007
(212) 346-0570

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DONALD FAISON, Plaintiff,	:	08 CV 2192 (PKC) (DFE)
- against -	:	**AFFIRMATION IN SUPPORT OF MOTION**
LEONARD ST., LLC, Defendant.	:	

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

AMANDA M. FUGAZY, being duly sworn deposes and says:

1. I am a partner at Fugazy & Rooney LLP, attorneys for Defendant Leonard St., LLC ("Leonard St."), which at the time of Plaintiff's employment was doing business as "66." As such, I have personal knowledge of the facts and circumstances set forth herein. I submit this Affirmation: (1) in support of Defendant's Motion to Dismiss each Count of the Complaint pursuant to Fed. R. Civ. P. 12(b)(6) and (2) to place before the Court true and accurate copies of documents referred to in the Plaintiff's Complaint and in Defendant's Memorandum of Law.

2. On June 2, 2008, in accordance with Your Honor's individual rules of practice, I submitted a letter seeking permission to make this motion. In response to my letter, Your Honor granted Plaintiff leave to amend his Complaint until June 20, 2008 and granted the Defendant permission to proceed with this motion if Plaintiff declined the opportunity to

amend. On July 10, 2008, Plaintiff filed an Amended Complaint and I submitted a new letter seeking Your Honor's permission to make this motion. On July 14, 2008, Your Honor issued an order granting Defendant until August 8, 2008 to make this motion.

3. On July 9, 2008, Plaintiff filed the Amended Complaint in this action, consisting of approximately two hundred and twenty-two (222) pages, comprised of eighteen (18) narrative pages annexed to forms, previously filed documents and unemployment hearing transcripts consisting of two hundred and four (204) pages. Because the voluminous Complaint is already filed with the Court, in the interest of conservation, we have not annexed the Complaint to this Affirmation.

4. Attached hereto as Exhibit "A" is a true and correct copy of 66's policy prohibiting harassment in the workplace and Plaintiff's signed acknowledgment of receipt of this policy. Defendant's policy and Plaintiff's acknowledgement of receipt of this policy were exhibits to the transcripts Plaintiff annexed to the Complaint. Because Plaintiff's Complaint contains these transcripts, which in turn refer to and discuss the exhibits, the Complaint incorporates the transcript exhibits by reference. Therefore, the Court may consider the transcript exhibits in deciding this motion to dismiss. *Automated v. Whellabraor Environmental Sys.*, 155 F.3d at 59, 67 (2d Cir. 1998). This legal point is discussed more fully in Defendant's Memorandum of Law in support of its motion to dismiss the Complaint.

WHEREFORE, Defendant respectfully requests an Order: (1) granting its motion to dismiss the Complaint in its entirety pursuant to Fed. R. Civ. P. 12(b)(6); (2) granting Defendants' attorneys fees for the cost of making this motion; and (3) granting further relief as the Court deems proper.

/S/

AMANDA M. FUGAZY (AF-6772)

EXHIBIT A

COMPANY POLICIES

ANTI-HARASSMENT POLICY

The following anti-harassment policy is for all employees of the restaurant., vendors and customers. The purpose is to provide an explicit policy and procedure prohibiting harassment in the workplace.

Policy

The restaurant prohibits harassment of any employee by a supervisor, employee or a visitor based on race, color, religion, creed, age, sex, national origin or ancestry, marital status, sexual preference, veteran's status, or status as a qualified individual with a disability, in accordance with applicable laws. While it is not easy to define what harassment is, examples include verbal (including improper joking or teasing) or physical conduct that denigrates or shows hostility or aversion towards an individual because of these protected attributes, and that (1) has the purpose or effect of creating an intimidating, hostile, or offensive working environment as defined by law; or (2) has the purpose or effect of unreasonably interfering with an individual's work performance; or (3) otherwise adversely affects an individual's employment opportunities.

Procedure

If you feel you are being subjected to unlawful harassment, speak to your supervisor or the restaurant manager. If you are unsure of to whom to raise an issue of harassment, or if you have not received a satisfactory response within five (5) business days after reporting any incident of what you perceive to be harassment, please immediately contact Human Resources who will insure that an investigation is immediately conducted. Every report of perceived harassment will be fully investigated and corrective action will be taken where appropriate. The phone number for Human Resources is 212-358-0688 x.17

The restaurant will promptly and thoroughly investigate the facts and circumstances of any claim of perceived harassment. Anybody, regardless of position or title, whom the restaurant determines has engaged in unlawful harassment of any kind, will be subject to discipline up to and including termination. No one will be subject to, and the restaurant prohibits, any form of discipline or retaliation for reporting incidents of unlawful harassment, pursuing any such claim, or cooperating in the investigation of such reports.

ACKNOWLEDGEMENTS

ACKNOWLEDGMENT AND RECEIPT OF ANTI-HARRASSMENT POLICY

I acknowledge that I have been provided with a copy of the 66's Anti-Harassment Policy (the "Policy"), that it was reviewed, and that I have read it and understand it and agree to abide by its terms.

In addition, I understand that any employee who engages in conduct prohibited by the Policy will be subjected to disciplinary action, up to and including discharge.

Signature ____ Print Name ____

12-16-05
Date

ACKNOWLEDGMENT AND RECEIPT OF SEXUAL HARASSMENT POLICY

I acknowledge that I have been provided with a copy of 66's Policy on Sexual Harassment (the "Policy"), that it was reviewed, and that I have read it and understand it and agree to abide by its terms.

In addition, I understand that any employee who engages in conduct prohibited by the Policy will be subjected to disciplinary action, up to and including discharge.

Signature ____ Print name ____

12-16-05
Date

EMPLOYEE HANDBOOK RECEIPT

I have received a copy of the 66's Employee Handbook and understand that I am responsible for becoming familiar with the policies described in it. I understand that the information contained in it represents management guidelines only, which may be modified from time to time. I understand that neither the handbook's policies nor any representations made by a management representative, at the time of hire or subsequently, are to be interpreted as a contract between Restaurant and any of its employees nor in any manner to alter the at-will nature of employment. I further understand that this handbook supercedes all prior policy statements, manuals and postings.

Signature ____ Print name ____

12-10-05

1111ID4411 I

EXHIBIT C-2
7/4/07